

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207751

DATE: March 8, 1983

MATTER OF: NonPublic Educational Services, Inc.

DIGEST:

Protest against postopening cancellation of IFB's is denied where agency subsequently presents different reason that would have supported the action if advanced initially, that is lack of Service Contract Act provisions.

NonPublic Educational Services, Inc. (NESI), protests the cancellation, after bid opening, of invitations for bids Nos. DAKF03-82-B-0061, DAKF03-82-B-0062 and DAKF03-82-B-0070, for various educational services, issued by the Department of the Army, Fort Ord, California. Previously, these services were small purchases solicited from a limited number of individuals on a sole-source basis.

We deny the protest.

NESI was the apparent low bidder on the referenced solicitations. However, the contracting officer concluded that the specifications were ambiguous since both firms and individuals competed for the contract. The contracting officer canceled the solicitations because the specifications were geared toward individuals, citing several specification deficiencies created by the participation of firms.

NESI contends that the decision to cancel improperly discriminated in favor of individuals. NESI questions whether there really was an ambiguity because none of the bidders protested or questioned the specifications. Moreover, NESI alleges that the contracting officer was sufficiently aware of the problem before bid opening, and had ample time to cancel without opening bids. In NESI's opinion, the alleged ambiguities did not justify cancellation of the solicitation.

The Army argues that, in addition to the contracting officer's justification, several other deficiencies in the solicitations support the cancellations, including the omission of various mandatory clauses, such as the clauses covering the Service Contract Act. The Army concludes that cancellation was required:

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"* * * since to make award would have resulted in the Government acquiring less than its minimum requirements, contracts whose provisions in all probability would breed disputes between the parties, and multiple violations of Federal procurement law and regulations."

Even if the reasons initially advanced by the contracting agency to support cancellation of an IFB may be erroneous, we have held that a subsequent statement justifying a particular action containing a different reason which would have supported the action, if advanced initially, is acceptable. Universal Telephone Communications Systems, Inc.; Fisk Telephone Systems, Inc., B-198533, April 27, 1981, 81-1 CPD 321.

We have long recognized that the authority of a contracting officer to cancel a solicitation is extremely broad and in the absence of bad faith or an abuse of discretion, a decision to cancel a solicitation will be upheld. However, because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find a cogent and compelling reason exists that warrants cancellation. Universal Telephone Communications Systems, Inc.; Fisk Telephone Systems, Inc., supra.

One of the subsequent reasons advanced by the Army alone justifies cancellation of the solicitations. We have held that the failure to include the Service Contract Act provisions and accompanying wage rate determination, is a compelling reason to cancel a solicitation. See e.g., NonPublic Educational Services, Inc., B-207306.2, October 20, 1982, 82-2 CPD 348. The protester does not take issue with this reason. Since failure to include this mandatory provision justifies cancellation, we need not consider the propriety of the other bases for the contracting officer's decision to cancel, even though the contracting officer may have been aware of those bases prior to bid opening.

For the above reasons, we deny the protest.

Milton J. Jordan
for Comptroller General
of the United States